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UNITED STATES DISTRICT COURT

3

DISTRICT OF OREGON

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THE HON. ANN L. AIKEN, JUDGE PRESIDING

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6 UNITED STATES OF AMERICA,)
7 Plaintiff,)
8 vs.) No. 6:06-cr-60011-AA
9 JOSEPH DIBEE,)
10 Defendant.)
_____)

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

15

MONDAY, DECEMBER 23, 2019

16

EUGENE, OREGON

17

TELEPHONIC STATUS CONFERENCE

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16 Also present:

17 Agent Tim Suttles
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1 MONDAY, DECEMBER 23, 2019; 11:01 A.M.

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4 COURTRoom DEPUTY: The United States

5 District Court for the District of Oregon is now

6 in session. Honorable Ann Aiken presiding. Now

7 is the time -- oh. Now is the time set for

8 criminal case 06-60011, United States of America

9 versus Joseph Dibee. Telephone status conference.

10 THE COURT: Good morning. If I

11 could ask people to introduce themselves for the

12 record, I'd appreciate it.

13 MR. BARROW: Geoffrey Barrow on

14 behalf of the United States and I'm joined at

15 counsel table by Tim Suttles with the (inaudible).

16 (Reporter inquiry.)

17 THE COURT: Wait. Stop. Stop.

18 MR. BARROW: Tim Suttles is a

19 special agent with the FBI and he is the case

20 agent in this matter.

21 THE COURT: You're going to need to

22 slow down and be more articulate and perhaps move

23 a little back from the microphone.

24 MR. BARROW: Is that better?

25 THE COURT: It seems to be better.

1 MR. HOOD: And Paul Hood for Joseph
2 Dibee, who is present and in custody.

9 MR. BARROW: Thank you, your Honor.
10 As you noted, the case has been remanded for
11 reconsideration of the defendant's motion for
12 release. First, I'd note there is a rebuttable
13 presumption that no condition or combination of
14 conditions of release will reasonably assure the
15 appearance of the defendant and the safety of the
16 community. I note also that defendant bears the
17 burden of proof to rebut the presumption of
18 dangerousness.

19 The government retains the burden of
20 persuasion. I'd also note that the danger to the
21 community must be established under the clear and
22 convincing standard and that the risk of flight
23 prong is subject to the preponderance of the
24 evidence standard.

25 In the government's view, the

1 following facts are uncontested. If that is not
2 the case, the government is prepared to call
3 Special Agent Tim Suttles to establish the
4 following facts.

5 First, the indictment in this case
6 triggered rebuttable presumption. I just noted.
7 Second, prior to indictment on December 7th of
8 2005, Mr. Dibee was served with a grand jury
9 subpoena. Two days later, he and an attorney met
10 with the government in Seattle. At that meeting
11 the government outlined the evidence the
12 government had compiled implicating Mr. Dibee in
13 the arson that destroyed the Cavel West
14 meatpacking plant. And at that meeting the
15 government asked Mr. Dibee to accept
16 responsibility for the attempt and to cooperate
17 with the government's investigation.

18 After that meeting, Mr. Dibee
19 returned to his home, he burned incriminating
20 evidence in his fireplace, and he enlisted a
21 friend to drive him to Mexico. From Mexico City,
22 he flew to Beirut, Lebanon, and from Lebanon, he
23 flew to Syria where he had family connections.

24 He established residence in Syria.
25 Syria is a country with no extradition treaty with

1 the United States. He obtained a Syrian passport
2 in the name of Yousef Deba, that is Y-O-U-S-E-F,
3 D-E-B-A. Mr. Dibee already had a U.S. passport in
4 the name of Joseph Mahmoud Dibee, D-I-B-E-E.
5 Although Mr. Dibee claims that Deba is a Syrian --
6 Syrian spelling for his name, Mr. Dibee listed his
7 parents' names and his name in his U.S. passport
8 application using the spelling D-I-B-E-E.

9 Mr. Dibee relocated from Syria to
10 Russia in 2010, where he established both a
11 residence and obtained visas to reside in Russia,
12 eventually married and adopted a son, both of whom
13 currently reside in Russia.

14 Mr. Dibee knew that he had been
15 charged in the United States. On two separate
16 occasions he contacted authorities to offer
17 information. On both occasions that cooperation
18 was conditioned on the complete dismissal of all
19 U.S. charges. As this Court noted in its hearing
20 on December 13th of 2019, Mr. Dibee knew that
21 there were U.S. charges. According to Pretrial
22 Services report, Mr. Dibee met with his sister
23 while he was a fugitive.

24 On May 21st of 2018, Mr. Dibee
25 traveled from Russia to Havana, Cuba. He was

1 scheduled to return to Russia on August 2nd of
2 2018. Instead, Mr. Dibee was stopped in
3 El Salvador. At the time he was traveling with a
4 Syrian passport. Again, that passport is in the
5 name of Yousef Deba. He also was carrying Russian
6 residency paperwork also in the name of Yousef
7 Deba.

22 Mr. Dibee has never attempted to
23 address -- to resolve the charges against him
24 aside from his efforts to request complete
25 dismissal while living in countries that have no

1 extradition treaties with the United States.

9 Now, the government has sympathy for
10 Mr. Dibee. He stands accused for crimes he
11 committed 18 years ago. He made a life for
12 himself in Russia where his wife resides and where
13 he gained employment that he's been recognized
14 for. He has talents that the government believes
15 could make a positive contribution to society, and
16 I'm sure that he wishes he could go back in time
17 to make different decisions regarding his
18 participation in these crimes and his decision to
19 flee from the United States to avoid prosecution.

1 opportunity that many of his codefendants did not
2 get. That's the opportunity to cooperate in the
3 investigation and accept responsibility early on.

4 Instead of cooperating, instead of
5 accepting responsibility, Mr. Dibee chose to run.
6 He ran from his family. He ran from his
7 community, and he ran from his work, and he ran
8 from his past, and established a life for himself
9 in Syria and later in Russia, and he successfully
10 avoided confronting his past for more than a dozen
11 years.

12 Critically, Mr. Dibee never
13 surrendered to face the charges. If he had
14 self-surrendered many years ago, this would be a
15 very different case. Then his citations to the
16 work he does, his research, could lay an argument
17 that he was a changed man and that the crimes he
18 committed and risk of flight that he poses were
19 well behind him.

20 That, however, is not what happened.
21 He would not be in this courtroom today if he had
22 not been caught, and he only got caught because
23 authorities in El Salvador were able to run his
24 fingerprints and relayed the warrant to Cuban
25 authorities. He now argues that he should get

1 credit for providing information to the government
2 while he was a fugitive. Those efforts were
3 always conditioned on the government's dismissing
4 all of the charges against him. That's something
5 the government could not do in light of the
6 seriousness of the charges.

7 He argues that the offenses were not
8 serious because no one was injured. As this Court
9 noted at sentencing other codefendants, that's
10 simply not true. The fires were completely out of
11 defendant's control, and the fact that no one was
12 injured by these fires was due to sheer luck more
13 than anything else.

14 The sentences that this Court
15 imposes on Mr. Dibee's codefendants in no way
16 lessened the severity of the underlying conduct.
17 As the Court is aware, there are many factors that
18 this Court used to fashion codefendant sentences
19 and they have no bearing on Mr. Dibee's eventual
20 sentence in this case.

21 The weight of the evidence is
22 clearly strong in this case. It was strong enough
23 to convince Mr. Dibee that he should flee the
24 country in 2005, and it remains strong today.

25 Mr. Dibee has argued that he is

1 rehabilitated, that he's a changed man, and he
2 cites the work that he has done in Russia and
3 elsewhere. The problem with his argument is that
4 any changes that he underwent while in Russia were
5 not of a nature to convince him to surrender to
6 U.S. authorities to face these charges. What it's
7 changed in this case is that Mr. Dibee got caught.

8 Now, the defendant does not have
9 strong ties to this community. While his sister
10 and father reside in Seattle, they were there in
11 2005, and those ties were not enough to keep
12 Mr. Dibee in the United States, and they are not
13 strong enough to make Mr. Dibee surrender to the
14 U.S. authorities in more than a dozen years.

15 In fact, Mr. Dibee's strongest
16 community ties are still in Russia. That is where
17 he's done most of his work. That is where his
18 community is. That's where his wife resides, and
19 I understand that he has a stepson in Russia.
20 Those ties in Russia only provide a greater
21 incentive to flee than Mr. Dibee had in 2005.

22 Now, his release plan in this case
23 involved him living with his sister in Seattle.
24 The government is troubled by the fact, as set
25 forth in the bail report, that the defendant's

1 sister met with him while he was a fugitive. At
2 that time she was either unwilling or unable to
3 get him to surrender to face the charges here in
4 this case, and there's no reason to suspect that
5 she will be able to convince him to remain here
6 now. It's also my understanding that Mr. Dibee's
7 sister helped to sell Mr. Dibee's property after
8 he left the United States.

9 Now, Mr. Dibee argued that he should
10 be released because four of his 11 codefendants
11 were released in this case. That comparison fails
12 to recognize that Mr. Dibee is one of very few
13 defendants that fled. This case is, in fact, most
14 similar to Rebecca Rubin. She was a Canadian
15 citizen. In fact, Mr. Dibee recruited her to
16 participate in the Litchfield arson. At that time
17 she was lawfully living in Canada where she was
18 when she was indicted in 2006. Four years later,
19 she voluntarily surrendered to U.S. authorities
20 and was detained by this Court pending trial.

21 At sentencing, the Court recognized
22 the significance of Ms. Rubin surrendering to U.S.
23 authorities and this Court sentenced her to
24 60 months.

25 On the issue of flight, prior to

1 this hearing we had a discussion with Pretrial
2 Services and the defendant about his passport.
3 And my understanding is that passport is still in
4 Mr. Dibee's possession through his sister. I
5 don't believe that's through any fault of
6 Mr. Dibee. I think that's a miscommunication, but
7 I'd simply note that the passport is not in
8 government possession.

9 Now, the argument -- the
10 government's argument on risk of flight is clearly
11 stronger than its argument on dangerousness, but I
12 would submit that's largely due to the fact that
13 our insight into Mr. Dibee's life in Russia and
14 Syria is extremely limited. I will note that the
15 defendant's history includes using violence to
16 impose his will on others and that propensity
17 poses an unacceptable danger to the community.

18 Now, again, the defendant argued the
19 charges aren't serious because of what some of the
20 codefendants received. As the Court knows, the
21 government moved for downward departures in
22 several of the codefendant cases. No such motion
23 is anticipated in this case.

24 When assessing dangerousness, it is
25 defendant's conduct that must be assessed. I

1 would note that the defendant has skills that he
2 outlined at the hearing last week, and they're
3 considerable skills, but it's those skills the
4 defendant relied upon in building the destructive
5 devices that destroyed the Cavel West plant.

6 I would also note although the
7 defendant gave a lengthy, albeit unsworn,
8 statement, at no point did he assure this Court
9 explicitly that he would return to face these
10 charges. And on that basis, your Honor, we
11 believe that the defendant should be detained. We
12 believe that he poses an unacceptable risk of
13 flight and a danger to the community. We believe
14 nothing the defendant has offered this Court
15 rebuts the presumption and we believe that the
16 facts warrant continued detention.

17 I'm happy to answer any questions
18 the Court may have.

19 THE COURT: I don't have any right
20 at the moment. I'll hear from both sides first.
21 So, counsel, go ahead.

22 MR. HOOD: Thank you, your Honor.
23 This is Paul Hood for Joseph Dibee.

24 THE COURT: All right. Right away
25 we are not going to be able to hear you.

1 MR. HOOD: All right. I'll speak
2 closer to the microphone, but I worry that I'm too
3 close now. Is this good?

4 THE COURT: That's better.

5 MR. HOOD: Okay. This is Paul Hood
6 for Joseph Dibee.

11 I think the Ninth Circuit realizes
12 that these sorts of rulings are rarely appealed by
13 the government, but that the government will no
14 doubt appeal if this Court and when this Court
15 maintains its re- -- renews its prior ruling from
16 December 13th.

17 I would like to address one thing in
18 particular that the government said, and this is a
19 quotation from Mr. Barrow, and this is where I'm
20 starting because I see the central point.
21 Mr. Barrow said moments ago what has changed in
22 this case is that Mr. Dibee got caught. And the
23 problem is, your Honor, that the government is
24 ignoring very significant and straightforward
25 evidence that it shouldn't ignore and that it

1 cannot ignore. I'm certainly not going to allow
2 that and I hope the Court will not allow that
3 either.

4 Mr. Dibee's most recent alleged
5 criminal conduct is in October of 2001. The
6 government says it has limited insight because for
7 part of the time Mr. Dibee was not in custody, he
8 was in Syria and Russia. But the government, once
9 again, ignores the fact that in 2002, 2003, 2004,
10 and 2005, Mr. Dibee was in the United States.
11 There was no additional criminal conduct.

12 I am stressing that point because on
13 December 13th, this Court had reviewed the memos,
14 heard argument, and heard perhaps most importantly
15 the statement from Mr. Dibee. He gave what was,
16 in my view, one of the most unusual and remarkable
17 statements I have ever heard a criminal defendant
18 make in the case. He essentially gave a science
19 lecture. He talked to this Court at length about
20 his innovations, about his projects, both his past
21 and ongoing efforts. I believe that was central
22 to this Court's conclusion that he should be
23 granted pretrial release.

24 In addition, your Honor, those
25 innovations reflect a change in philosophy that I

1 have been arguing to the Court both in the memo,
2 in my oral argument, and I see it as illustrated
3 by his statements, and it is that he has changed
4 in a specific way. He regards the best way to
5 protect the natural world is to link up the profit
6 motive that drives businesses with green
7 technology. So that innovation becomes the most
8 profitable means.

9 And you may remember a moment from
10 his remarks that specifically reflects that where
11 he talked about the problem of the separation of
12 gold and ore using mercury, and he talked about
13 how dangerous that is to the environment. He
14 talked about specific reasons why it's dangerous.
15 He talked about the fact that mercury is an
16 element. It doesn't biodegrade. It doesn't break
17 down, as he put it. It just sits there. But, of
18 course, it doesn't just sit there in one place.
19 It can also, because of heavy rain, flood into
20 watersheds and create all sorts of problems.

21 He talked about his alternative
22 method which is not only better for the
23 environment because it's potentially much more
24 efficient than mercury and something that
25 businesses would use, it's something that they

1 would seek out, and that sort of innovation that
2 is so good for the natural world and for humanity
3 is reflected in the letter from Douglas McKinnon
4 in support of release for Mr. Dibee. And
5 Mr. Dibee talked about how he met Douglas
6 McKinnon, talked about who Douglas McKinnon is.

7 All of these things are consistent
8 with common sense and with the Court's own
9 experience in this case, which is that people
10 change over time. You have people in this case
11 who were idealistically motivated, but over time
12 learned the error of their ways, and Mr. Dibee has
13 learned that error as well.

14 And most importantly -- like he
15 said, most importantly, that this is just
16 something I can't get past, your Honor. You got
17 to hear from him. I think he spoke to you for at
18 least ten minutes. You got to evaluate him. You
19 got to assess his credibility. You got to make a
20 judgment about him. You got to see how he teared
21 up when he talked about Syrian refugees. You got
22 to see that he cares about people. He cares about
23 the natural world. And the government can only
24 reference you back to a kind of genre argument to
25 how serious these crimes are. We're not saying

1 they're not serious.

2 When I make reference to sentences
3 that other defendants have received in this case,
4 and I talked about the two categories of
5 defendants, that was reflective of defendants
6 (inaudible). I'm not arguing that the charges
7 aren't serious. I'm saying instead that there's a
8 pattern here. There's a pattern of two different
9 groups of defendants.

10 One group received sentences ranging
11 from 37 to 60 months. Those were defendants
12 charged with between two and four counts. And
13 then you have defendants charged with 17 or more
14 counts in a 65 count indictment.

15 And the point is -- sorry, your
16 Honor. It's that time of year. Pardon me. The
17 point is there's no intermediary there. There's
18 no 8-, 9-, 10-count defendants. There's this
19 massive gap and that means Mr. Dibee is firmly
20 placed in that first collection of defendants --
21 and we're talking about defendants and Mr. Barrow
22 made specific reference to Rebecca Rubin. Those
23 defendants, Rebecca Rubin among them, did no worse
24 than five years in any instance and I would say
25 that gives you a specific data point to rely upon.

1 Where the government turns to this
2 kind of genre argument about how serious the crime
3 is, we turn to the more specific argument specific
4 to this case that you know the outcomes, and as I
5 point out in my memo in support of pretrial
6 release, if you knew someone was facing a sentence
7 of around 37 to 60 months, it would certainly not
8 be outlandish to say that that person would
9 receive pretrial release.

10 In addition, your Honor, the
11 government continues to make a lot -- a lot of
12 statements about this idea of the name Yousef
13 Deba. It's on and on and on -- it's on and on and
14 on throughout the argument. It's referenced in
15 the very first paragraph of the memo that the
16 government presented in opposition for pretrial
17 release.

18 And I again say to your Honor, and I
19 think -- I think the Court understands this, that
20 that is no different than if I were of Italian
21 descent and I relocated to Italy and I went by
22 Paolo instead of Paul. And that's my
23 understanding what my Italian name would be. Or
24 if I moved to a Spanish-speaking nation and I went
25 by Pablo instead of Paul. I mean, the

1 government's making so much of this with you, it's
2 simply the Arab/Syrian version of Joseph Dibee.
3 There's -- and there's nothing that they're
4 showing you that would disagree or dispute that.

5 The government has stated details
6 about the rebuttable presumption and has
7 specifically noted to you that the ultimate burden
8 of persuasion remains with the government. What
9 the defendant has is a burden of production. We
10 have met that burden, your Honor.

11 And I, this morning, filed a very
12 short supplemental memorandum in support of the
13 motion for release from custody. It details
14 briefly that legal standard, and then it
15 references several findings that I think the Court
16 did make implicitly and could make explicitly in
17 support of continued pretrial release, or I should
18 say, renewed pretrial release for Mr. Dibee.

19 The first of those is that Mr. Dibee
20 has changed. The Court specifically referenced
21 that. The Court specifically referenced its
22 experience with this case and its experience with
23 other defendants in this case. And, of course,
24 this idea that people change just fits with common
25 sense. But it isn't just common sense. It's the

1 reality of this case. It's 2002, 2003, 2004, 2005
2 with no criminal conduct.

3 It's all those additional years
4 beyond that where, admittedly, the government will
5 say they don't know everything that Mr. Dibee was
6 doing, but I think the Court has a good idea when
7 you listened to what I call his science lecture,
8 where he goes through the details of all the
9 projects he had been working on, where he goes
10 through the details of specific types of solar
11 technology that he -- that he attempted to develop
12 in Syria, and that plan fell apart because of the
13 Syrian War.

14 And I think you saw his emotional
15 reaction when he was talking about that. You got
16 to assess him. You made your assessment and I'm
17 asking you to stand by it.

18 In addition, you specifically
19 referred to him as a different person with
20 enormous skills to provide and you talked about
21 how you wanted him to go forward and use those
22 skills.

23 Also, your Honor, the government is
24 not disputing the fact that Mr. Dibee twice
25 contacted the government about supervised

1 releasing himself. Now the government says, Well,
2 you know, it didn't work out, and they make some
3 other comments about it, but I want to talk about
4 exactly what happened in a greater level of
5 detail.

6 Mr. Dibee was represented by an
7 attorney during that process, Nancy Hollander. I
8 have spoken to her. I have memos from her from
9 the time reflecting the conversations that
10 occurred. These included conversations with
11 assistant United States attorney Kirk Engdall who
12 was handling the case at the time.

13 Mr. Dibee, at great risk to himself,
14 attempted to provide assistance to the United
15 States government. This is referenced in the
16 confidential memo, but I'm going to talk about it
17 in a bit more detail now. And I would note this.
18 If I'm mistaken, please correct me. I will give
19 the government a moment to respond to this point.
20 But I don't believe that FBI Agent Suttles was
21 present for the conversation of June 7th, 2011.
22 If I'm wrong about that, I'm not trying to violate
23 decorum, but I would just like to note that
24 Mr. Suttles wasn't. Because if he was, maybe we
25 should call him as a witness.

5 MR. BARROW: And what subject and
6 where was this?

7 MR. HOOD: Well, it was a phone
8 conference. It was on the subject of Mr. Dibee
9 providing assistance to the United States
10 government to prevent a Syrian attack -- while he
11 was in Syria to prevent an attack against Israel.
12 It was related to what you and I have talked about
13 with Mr. Barrow. It's the "roomful of money"
14 conversation.

15 MR. BARROW: One minute, please. So
16 Mr. Suttles or Agent Suttles, excuse me, is
17 familiar with the call -- contemporaneously
18 familiar with the call but wasn't present when
19 this call occurred.

20 MR. HOOD: Thank you. I appreciate
21 that clarification.

22 Your Honor, the memorandum of
23 June 7th, 2011, from Nancy Hollander, again, the
24 attorney that represented Joseph Dibee at the
25 time, the attorney that I've talked to on the

1 phone who has provided me her memos, indicates
2 that it's written a bit like a script in that you
3 have a speaker and then a note about what the
4 speaker said, and the statement by Kirk Engdall is
5 reflected in the sealed memorandum. And that
6 statement from Kirk Engdall is the information
7 he's given us will already help at the end of all
8 of this.

16 Syria -- well, I mean I think the
17 Court would be -- would appreciate just how much
18 dirt that is, would appreciate the potential for
19 Syrian authorities to learn of that and to take
20 harsh and extreme measures against him. And, in
21 any case, you have a statement from Kirk Engdall
22 saying that he helped himself. That Mr. Dibee, by
23 giving that information, has helped himself at the
24 end of all of this.

25 I say all this, your Honor, because

1 Mr. Dibee has a lot to lose if he were to run on
2 this case. I think that we potentially have an
3 enforceable assistance statement, a promise of
4 leniency. I think it could most reasonably be
5 interpreted as something that would crack any
6 notion of a mandatory minimum being applied in
7 this case.

8 In addition, even if the government
9 will not agree with me on this point, the Court
10 can find it. The Court can find that there was a
11 promise of leniency made. In addition to that,
12 even if no such promise was ultimately made that
13 would crack the mandatory minimum, the Court could
14 still rely upon it as a -- a background factor
15 related to Mr. Dibee that could be taken in
16 consideration at sentencing.

17 Now, turn back for a moment to
18 Exhibit 2 if you have it in front of you. If you
19 don't, I would point out to you you have Darren
20 Thurston, Jonathan Paul, Kendall Tankersley,
21 Rebecca Rubin, all in that category of defendants
22 that Mr. Dibee is firmly implanted in. They got
23 sentences ranging from 37 to 60 months. I'm not
24 aware of any of them being able to give or
25 attempting to give the kind of assistance at great

1 personal risk dealing with security forces in
2 Syria, potentially living in an apartment where
3 the ears may have walls [sic], calling on a phone
4 that he doesn't know is secure and offering the
5 United States government assistance to prevent
6 what he believes is going to be a terrorist attack
7 against Israel.

8 The only person that should even
9 begin to be put in that category is Jonathan Paul.
10 I don't know because I'm not allowed to know all
11 of the assistance that Jonathan Paul gave to the
12 government. The government's sentencing
13 memorandum on this point suggests a 17-level
14 downward departure for Jonathan Paul. I imagine
15 that Jonathan Paul attempted to assist. I don't
16 know if he was successful. But his attempted
17 assistance probably ultimately related to property
18 crimes, crimes where buildings were destroyed,
19 arsons occurred, not a terrorist attack
20 potentially being carried out against the nation
21 of Israel.

22 I would say to you that Joseph Dibee
23 deserves at least as much as Jonathan Paul got. I
24 would love to hear the government's position
25 today, now, as we're talking about this in more

1 detail if they believe that somehow the assistance
2 that Joseph Dibee offered is worth less at saving
3 lives and the risk he took to try to protect human
4 life is somehow less than the assistance that
5 Jonathan Paul provided.

6 Again, I don't know the details of
7 that, but it amounted to a recommendation of a
8 17-level downward departure, and of course
9 Jonathan Paul broke out of the mandatory minimum.

10 Now, if Mr. Dibee runs, he loses all
11 of that, I think. I think any idea that this
12 Court would enforce an assistance agreement or a
13 promise of leniency if Mr. Dibee runs again, if he
14 breaks out of pretrial release, if he cuts the
15 ankle monitor off and disappears, I can't imagine
16 that the Court would keep that as an option for
17 him, and Mr. Dibee knows that. He knows that he
18 has so much to lose if he were to run.

19 That is more specific -- what I just
20 said to you in those few moments, your Honor, is
21 more specific than any argument that the
22 government is making because the government
23 continues to rely on this notion of a genre. It's
24 a really serious crime. That's what it's saying.

25 Also, this Court, in referencing and

1 granting -- in granting pretrial release on
2 December 13th, this Court referenced the quality
3 of Mr. Dibee's home plan. It referenced how well
4 specifically his sister was established in the
5 community. His sister is a doctor. She's
6 worked -- she's been a doctor for 20 years. She's
7 worked for the same employer for 12 years.

8 His brother-in-law is an engineer.
9 He's been an engineer for 25 years. I think he's
10 been with the same company for about the same
11 length of time. I had the details more on the tip
12 of my tongue, your Honor, but the point is when we
13 were here on Friday, December 13th, is they're
14 extremely well-established people and they're very
15 willing to have him in their home.

16 Now the government makes reference
17 to the U.S. passports, and I'm glad the government
18 was very clear about this because I want to --
19 it's true, to my knowledge, that the U.S. passport
20 is still in the possession -- pardon me -- the
21 Syrian passport. I misspoke. That the Syrian
22 passport is still in the possession of Maha Coles.
23 Two things about that. One is that it's expired.
24 But, two, is the only reason it's still in her
25 possession is because Noe Rios called me this past

1 week and we were trying to figure out, and I don't
2 think this point is disputed by anyone, and
3 there's an officer who's here today, that we
4 didn't know where to turn the passport in because
5 there was no case open in Washington, no --
6 nothing -- nothing that the Pretrial Services
7 Office would take the passport for.

8 My suggestion was going to be just
9 to mail it down here, but in the meantime while
10 all that was getting figured out, we got the
11 ruling from the Ninth Circuit and Joseph Dibee
12 went back into custody. I mean, we can figure out
13 the passport situation. It can be mailed. It can
14 be shredded and the bits could be handed over to
15 the Pretrial Services Office in Seattle. I'm
16 being a little off the cuff and flippant when I
17 say that, your Honor, but it can be taken care of.
18 That can be dealt with. It is no act of
19 misconduct.

20 And, in fact, I want to talk -- and
21 I addressed this in my supplemental memo -- about
22 just how good Mr. Dibee was for the brief time
23 that he was on pretrial release. Because the
24 Court directed him to be there first thing Monday
25 morning in Seattle, and I was on the phone with

1 him, and I think he was there at about 7:45 a.m.
2 He was there. He was there before there was even
3 anyone to come out and talk to him. He was
4 waiting in the lobby of Pretrial Services Release
5 Office to be processed.

6 And then, of course, your Honor, on
7 Wednesday of last week at about 2:20, and I'm
8 pretty confident about that time because, of
9 course, when rulings are published, we get emails,
10 and so at 2:20 in the afternoon on Wednesday of
11 last week, I -- I -- there's an email that goes
12 out that -- the notification that the Ninth
13 Circuit has -- has remanded this case to you, is
14 ordering Mr. Dibee back into custody.

15 I saw that email I believe shortly
16 after that, quite shortly after that, 20 minutes
17 maybe, and I -- you know, I just called Noe Rios
18 as I was reading it so it stands out in my memory.
19 I then called Mr. Dibee. I called him at about
20 2:53 p.m., so it's about 30 minutes after the
21 ruling had come out, and Mr. Dibee was back down
22 at the Pretrial Services Office at 3:40 p.m.
23 Okay? An hour and 20 minutes after the email goes
24 out announcing the ruling.

25 He has been extraordinarily

1 compliant to this point. I mean, one of the
2 reasons I think that the government -- I don't
3 know that the government will admit this, and
4 maybe it's not even in their thinking, but maybe
5 it is. You know, they had to expedite this
6 because if this had gone under a normal briefing
7 schedule, the original briefing schedule for this
8 issued by the Ninth Circuit was going to be -- the
9 government's memo was going to be due, I believe,
10 on December 30th. The defense memo would have
11 been due about ten days later.

12 If we had gone that far into
13 January, we would have had a track record for
14 Mr. Dibee. He would have been compliant and
15 compliant and compliant because, your Honor, your
16 December 13th assessment of him, which I think is
17 the most profound piece of evidence in this
18 case -- you got to size him up. The Ninth Circuit
19 hasn't done that. You got to do that. You got to
20 assess his credibility, his demeanor. You got to
21 put that into your experience with this case and
22 with defendants in other cases and you made an
23 evaluation of him and you found that he's a
24 different person. And that finding is the most
25 overwhelming finding in the case. It is the one

1 | that is of the most important.

2 The government mentions that his
3 sister helped him sell property while he was at
4 large. Your Honor, to my understanding, that was
5 done, and I referenced this on December 13th, that
6 Mr. Dibee continued to pay his taxes even after he
7 left the United States.

18 I'm not arguing it's not serious,
19 but people got pretrial release in this case.
20 Jonathan Paul, Kendall Tankersley, Suzanne Savoie,
21 who had 17 counts in her -- against her from the
22 65-count second superseding indictment, and Daniel
23 McGowan who had 18. all granted pretrial release.

1 Mr. Dibee. I'm asking you just to stand by that
2 assessment.

3 The Ninth Circuit has given you what
4 I regard as an invitation to substantiate your
5 rulings more extensively because the Ninth Circuit
6 recognizes that this is an unusual situation and,
7 undoubtedly, the government will appeal this
8 ruling if you again return to your position and
9 grant Mr. Dibee pretrial release. And that ruling
10 is exactly what you should do.

11 The best position you were ever in,
12 the best position of anyone has ever been in this
13 case to evaluate the pretrial release question was
14 at the conclusion of Mr. Dibee's statements on
15 December 13th that he detailed to you his efforts.

16 And you noted, your Honor, that you
17 wanted him to continue those, and he should. He
18 should. The government says, Well, it wasn't
19 under oath that he made those statements. Your
20 Honor, I don't -- I don't think you can fake the
21 kind of scientific knowledge that Mr. Dibee was
22 demonstrating through his statements.

23 And I -- again, I think it is one of
24 the most unusual statements I have -- it is. I
25 just -- not one of. It is the most unusual

1 statement I have ever heard from a defendant in
2 custody. He's basically giving us a science
3 lecture, but it's a science lecture that fits with
4 his changed philosophy which fits with the fact
5 that he is a different person.

6 And, your Honor, I would add this.
7 You know, even in the brief time he's been out, he
8 has been visited by two professors who are aware
9 of the work that he would like to do and are
10 offering him assistance. I mean, one of the
11 things he was talking to me about, one of the
12 things his family was talking to me about, for
13 instance, while he was out of custody, your Honor,
14 was that the Seattle office was putting a
15 restriction on his computer use. I believe the
16 Court had ruled computer monitoring.

17 But what the Seattle office ended up
18 saying, as I understand it, was, well, that he
19 couldn't use any device, smartphone, computer,
20 what have you, that would have internet capability
21 which, of course, is exactly what he needs because
22 the work that he's doing requires him to get on
23 the internet, look at science journals, do
24 research. As my client would put it -- he's put
25 it to me this way and it just makes sense, if what

1 he's trying to do was easy, someone else would
2 have already done it.

3 The problems that he's trying to
4 solve are serious problems for humanity. He
5 talked to you in what I called his science lecture
6 about how the rainwater changes the pH balance,
7 and I don't even remember all the details, but I
8 remember the poison gas which is deadly for people
9 and there's nothing you can do about it once
10 someone gets exposed.

11 Now, those kinds of details aren't
12 fake. Yeah, he didn't take the witness stand. He
13 didn't swear out an oath. But he's not faking it,
14 your Honor, and you judged him correctly. He has
15 changed. There are plenty of evidentiary findings
16 available to you. He has rebutted the rebuttable
17 presumption. The government has not met its
18 burden of persuasion. He should be released
19 again, your Honor. Thank you.

20 MR. BARROW: Your Honor, this is the
21 government. May I respond?

22 THE COURT: I'd just like to remind
23 people of this one fact. He was arrested August
24 of 2018. Correct?

25 MR. BARROW: That's correct, your

1 Honor.

2 THE COURT: And today is
3 December 23rd, 2019, and we are still in a
4 pretrial format. Just a reminder. Go ahead.

5 MR. BARROW: Your Honor, I think
6 Mr. Hood and I talked about the delay and I think
7 we're going to address -- we plan to address that
8 with the Court in our January status conference.

9 But in response to Mr. Hood's
10 arguments, Mr. Dibee did give us kind of a lengthy
11 lecture. I don't doubt the sincerity of what
12 Mr. Dibee said during that lecture, but it does
13 not in any way address his risk of flight in this
14 case.

15 I guess I would ask: When did
16 Mr. Dibee's transformation occur? I certainly
17 hope that it occurred prior to him getting caught.
18 I hope he realized that he could use his talents
19 to improve the planet through innovative ideas and
20 economics prior to him being caught.

21 What his transformation did not do
22 is it did not lead him to surrender, to face his
23 past and to address these charges. He was working
24 on all of those great ideas while a fugitive from
25 justice in the United States.

1 The government's argument for
2 detention is not a genre argument. What is unique
3 about the defendant is that he fled and he was a
4 fugitive for a dozen years.

Now, the issue of the name on the defendant's passport, the Syrian passport, I'm not insinuating that he made that name up. I'm merely pointing out that it's not a name that's used on his American passport. It is the name that was on his arrest warrant. And the use of that Syrian name on the Syrian passport enabled him to flee from El Salvador. It was certainly more convenient for him to travel on an El Salvador -- on a Syrian passport in a name that is not Joseph Dibee than if he were trying to travel on his American passport.

17 I'd like to also address the issue
18 of cooperation. I talked to a former AUSA Kirk
19 Engdall about the information that Mr. Hood has
20 outlined, and he was very confident that there
21 were no promises that were ever made to Mr. Dibee.
22 As the Court undoubtedly knows, a cooperation
23 agreement is a contract. A defendant offers their
24 cooperation in exchange for something and that
25 cooperation may be accepted by the government. In

1 any cooperation agreement, part of what Mr. Dibee
2 would be required to do would be to surrender and
3 to accept responsibility for the crime. That is
4 not what happened.

5 In fact, my understanding is that
6 Mr. Dibee's offer of information was conditioned
7 on dismissal of all of the charges. That was
8 Mr. Engdall's recollection. And Mr. Dibee also
9 withheld details of the information unless he
10 could secure a promise that he would not be
11 prosecuted.

12 None of the defendants that Mr. Hood
13 is comparing Mr. Dibee with were fugitives. None
14 of those defendants conditioned their cooperation
15 on complete dismissal of all of the charges that
16 they were facing. Simply put, Mr. Dibee's in a
17 completely different category, a category of his
18 own. As I argued before, he's most similar to
19 Ms. Rubin. But Ms. Rubin surrendered without a
20 promise that all charges be dismissed.

21 Finally, I would just like to
22 address Mr. Dibee's conduct while he was on
23 release. I do appreciate the fact that Mr. Dibee
24 surrendered when he learned of the Ninth Circuit's
25 order that he do so, but the amount of time that

1 he was on release was simply not sufficient for us
2 to judge his compliance with conditions. Keep in
3 mind, it took him several days to flee the country
4 in 2005.

5 On the record before the Court, we'd
6 ask the Court to detain Mr. Dibee both as a risk
7 of flight and a danger to the community. Thank
8 you.

9 MR. HOOD: Your Honor, this is Paul
10 Hood. If I may just address the dismissal of all
11 charges part of the government's argument.

12 THE COURT: Sure. Go ahead.

13 MR. HOOD: That is not reflected in
14 any memorandum or any discussion I've had with
15 Nancy Hollander. It may be Kirk Engdall's
16 recollection, but it would be a recollection of
17 the conversation that he had in 2011, specifically
18 about the June 7th, 2011. I can say that date
19 because that's the date on the memo that I have
20 from Nancy Hollander.

21 Certainly it is true that there was
22 never an ultimate agreement reached for Mr. Dibee
23 to turn himself in and there was never a contract,
24 but, nonetheless, a promise of leniency can be
25 enforceable without a contract. I don't want to

1 go into all that. We may litigate that later in
2 this case in any event -- in any case, your Honor,
3 but there -- that idea that they had to dismiss
4 all charges and that's the only way that -- it's
5 just not -- it's not accurate, your Honor. It's
6 not reflected.

7 And I don't have Kirk Engdall here
8 and you don't have him here so we can hear from
9 him to find out how good is his memory when the
10 conversation was from 2011.

11 Again, your Honor, I think you have
12 plenty in front of you. Mr. Dibee has met the
13 rebuttable presumption.

14 THE COURT: Unless -- is there
15 anything else?

16 MR. BARROW: I'm sorry?

17 THE COURT: Is there anything else?

18 MR. BARROW: Not for the government,
19 your Honor. Thank you.

20 MR. HOOD: And not from the -- just
21 a moment, actually, your Honor.

22 No. Nothing more from the
23 defendant, your Honor. Thank you.

24 THE COURT: Well, thank you. After
25 this was placed on my docket at the last minute

1 and I -- I made my ruling from the bench, I'm
2 going to take this under advisement and I'll have
3 a written ruling for you trying to reach the
4 question that's been sent back by the Ninth
5 Circuit.

6 So you'll have it in writing so it
7 will be available and clear, but I'm going to tell
8 you I will see you in January and I -- one of the
9 things in moving this case is -- with the fact
10 that it came to me a year and a half after he's
11 been arrested and has been in custody and didn't
12 challenge the initial determination, but at some
13 point, this case needs to be moving and a
14 resolution done.

15 And so whatever I decide to do
16 today, this case will be under regular status
17 conference hearings to move and get to a
18 resolution.

19 It's an old case. We all know many
20 of the facts of this case. And we just -- it's --
21 it needs to be resolved. Or tried.

22 So with that stated, I'll get
23 something out to you shortly. Thank you.

24 (Reporter inquiry.)

25 THE COURT: We have a new court

1 reporter who is not familiar with all the players
2 in the building. So anything else?

3 MR. BARROW: Not for the government.
4 Thank you, your Honor.

5 THE COURT: Thank you.

6 MR. HOOD: Thank you, your Honor.
7 Nothing more from the defense.

8 (The proceedings recessed at 11:50 a.m.)

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I certify, by signing below, that the foregoing is a correct transcript, to the best of my ability, of the record of proceedings in the above-entitled cause heard by speakerphone, taken by stenographic means. Due to the telephonic connection, parties appearing via speakerphone or cellphone, speakers overlapping when speaking, fast speakers, the speaker's failure to enunciate, and/or other technical difficulties that occur during telephonic proceedings, this certification is limited by the above-mentioned reasons and any technological difficulties of such proceedings. A transcript without an original signature or conformed signature is not certified.

/s/ Jan R. Duiven
JAN R. DUVEN, CSR, FCRR, CRC
Official Court Reporter
Oregon CSR No. 96-0327

1 / 24 / 2020
DATE